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IN THE UNITED STATES DISTRICT COURT  
THE DISTRICT OF NEW JERSEY

-----	X	
UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	HON. JOHN C. LIFLAND
v.	:	
	:	
PADRAIG ("PAT") TARRANT, and	:	Civil Action No. 03CV3899 (JCL)
KATHY CHATTERTON,	:	
	:	
Defendants.	:	CONSENT DECREE
-----	X	THIRD-PARTY DEFENDANT
KATHY CHATTERTON,	:	PAUL BOYKO
	:	
Defendant/Third Party Plaintiff,	:	
	:	
v.	:	
	:	
TOP NOTCH METAL REALTY CO., INC.,	:	
JOSEPH SCAGLIONE, VIRGINIA SCAGLIONE,	:	
JOSEPH COVIELLO, JR., JAMES O'BRIEN,	:	
PHILIP MICELI, ROBERT MICELI, PAUL	:	
BOYKO, MEADOWLANDS PLATING AND	:	
FINISHING, INC., and MPF PLATING AND	:	
FINISHING, INC.,	:	
	:	
Third Party Defendants.	:	
-----	X	

CONSENT DECREE

I. BACKGROUND AND SITE DESCRIPTION

The United States of America ("United States"), on behalf of the Administrator of the

United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), against Defendants Padraig ("Pat") Tarrant and Kathy Chatterton seeking reimbursement of response costs incurred or to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances from a facility known as the "Meadowlands Plating and Finishing Superfund Site," "MPF Plating and Finishing, Inc., Superfund Site," or "Site," located at 890 Paterson Plank Road, East Rutherford, N.J.

Defendant Kathy Chatterton filed a Third Party Complaint against several parties, including Mr. Paul Boyko.

The United States and Third-Party Defendant Paul Boyko (hereinafter "Settling Defendant") have agreed on the terms set forth in this Consent Decree to resolve Boyko's potential liability in this action. By entering into this Consent Decree, Settling Defendant makes no admission of liability in connection with the Site.

The United States and Settling Defendant agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

The Site is the former home to a succession of electroplating and metal finishing businesses in an area of light industry in East Rutherford, New Jersey. Initially founded in the late 1970s, under the name Top Notch Metal Finishing Company, the facility, located at 890 Paterson Plank Road, consisted of a 38,000 square foot building housing the equipment used in

electroplating metal products for a variety of customers on the east coast. From late 1994 through December 1996, the Site was operated by Meadowlands Plating and Finishing, Inc. In December 1996, MPF Plating and Finishing, Inc., formally succeeded Meadowlands and operated the Site until early 1998.

In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.

The United States has incurred at least \$1.5 million in un-reimbursed response costs at or in connection with the Site.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

## II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendant. Settling Defendant consents to and will not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## III. VENUE

2. Venue is proper in this district pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613, and pursuant to 28 U.S.C. §§ 1391(b) and (c), and 1395(a), as it is the judicial district in which the releases or threatened releases occurred.

## IV. PARTIES BOUND

3. This Consent Decree is binding upon the United States, and upon Settling Defendant

and his heirs, successors and assigns.

#### V. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree, the following definitions will apply:

a. "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.

b. "Consent Decree" means this Consent Decree and all appendices attached hereto.

c. "Day" means a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period will run until the close of business of the next working day.

d. "DOJ" means the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

e. "EPA" means the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

f. "EPA Hazardous Substance Superfund" means the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

g. "Interest" means interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest will be the rate in effect at the time the interest accrues.

h. "Paragraph" means a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

i. "Parties" means the United States, and Third Party Defendant Paul Boyko.

j. "Plaintiff" means the United States of America.

k. "Section" means a portion of this Consent Decree identified by a Roman numeral.

l. "Site" means the "Meadowlands Plating and Finishing Superfund Site," "MPF Plating and Finishing, Inc., Superfund Site," or the "Site," formerly located at 890 Paterson Plank Road, East Rutherford, New Jersey.

m. "United States" means the United States of America, including its departments, agencies and instrumentalities.

#### VI. STATEMENT OF PURPOSE

5. By entering into this Consent Decree, the mutual objective of the Parties is for Settling Defendant to make a cash payment to address his potential liability for the Site as provided in the Covenant Not to Sue by Plaintiff in Section X , and subject to the United States' Reservations of Rights in Section XI.

#### VII. PAYMENT OF RESPONSE COSTS

6. Within 30 days of entry of this Consent Decree, Settling Defendant must pay to the United States EPA one (\$1.00) dollar.

7. Payment must be made by certified check or cashier's check made payable to "United States Department of Justice," referencing the name and address of the party making payment, the EPA Region and Site Spill ID Number 02LW, and DOJ Case Number 90-11-2-07713/2. Settling Defendant must send his check to the attention of the Financial Ligation Unit c/o:

Christopher J. Christie  
United States Attorney  
Peter Rodino Building  
970 Broad Street, Suite 700  
Newark, NJ 07102

8. At the time of payment, Settling Defendant must send notice that payment has been made to EPA and DOJ in accordance with Section XIV ("Notices and Submissions").

#### VIII. FAILURE TO COMPLY WITH CONSENT DECREE

9. Interest on Late Payments.

If Settling Defendant fails to make payment under Paragraph 6 by the required due date, Interest will continue to accrue on the unpaid balance through the date of payment.

10. Stipulated Penalty.

a. If the amount due under Paragraph 6 is not paid by the required due date, Settling Defendant will be in violation of this Consent Decree and will pay, as a stipulated penalty, in addition to the interest required by Paragraph 10, \$100.00 per violation per day that such payment is late.

b. Stipulated Penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph must be identified as "Stipulated Penalties" and must be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, must reference Settling Defendant's name and address, the Site name, the EPA Region and Site Spill ID Number 02LW, and DOJ Case Number 90-11-2-07713/2, and must be sent to:

US EPA - Hazardous Substance Superfund  
P.O. Box 360188M  
Pittsburgh, PA 15251

c. At the time of payment, Settling Defendant must send notice that payment has been made to EPA and DOJ in accordance with Section XIV ("Notices and Submissions").

d. Stipulated Penalties will accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendant of the violation or made a demand for payment, but need only be paid upon demand. All Stipulated Penalties begin to accrue on the day after payment is due, or the day a violation occurs, and will continue to accrue through the date of payment. Nothing herein will prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

11. If the United States brings an action to enforce this Consent Decree, Settling Defendant must reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

12. Payments made under this Section will be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendant's failure to comply with the requirements of this Consent Decree.

13. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties will not excuse Settling Defendant from payment as required by Section VII or from performance of any other requirements of this Consent Decree.

#### IX. COVENANT NOT TO SUE BY PLAINTIFF

14. Except as specifically provided in Section X ("Reservation of Rights by United States"), the United States covenants not to sue or to take administrative action against Settling

Defendant pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site. With respect to present and future liability, this covenant not to sue will take effect upon receipt by EPA of all payments required by Section VII ("Payment of Response Costs"), and any amount due under Section VIII ("Failure to Comply with Consent Decree"). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendant of his obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendant and does not extend to any other person.

#### X. RESERVATION OF RIGHTS BY UNITED STATES

15. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within the Covenant Not to Sue by United States in Section IX. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendant with respect to:

- a. liability for failure of Settling Defendant to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability, based upon Settling Defendant's ownership or operation of the Site, or upon Settling Defendant's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree by Settling Defendant; and,
- e. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside the Site.



## XI. COVENANT NOT TO SUE BY SETTLING DEFENDANT

16. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Consent Decree, including but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or,
- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613.

17. Nothing in this Consent Decree may be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611.

18. Settling Defendant agrees not to assert any CERCLA claims or causes of action that he may have for all matters relating to the Site, including for contribution, against any other person.

## XII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

19. Except as provided in Paragraph 18, nothing in this Consent Decree may be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence cannot be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. Except as provided in

Paragraph 18, the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

20. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendant is entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person. The "matters addressed" in this Consent Decree do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States asserts rights against Settling Defendant coming within the scope of such reservations.

21. Settling Defendant agrees that, with respect to any suit or claim for contribution brought by him for matters related to this Consent Decree, he will notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against him for matters related to this Consent Decree, he will notify EPA and DOJ in writing within ten days of service of the complaint or claim upon him. In addition, Settling Defendant must notify EPA and DOJ within ten days of service or receipt of any Motion for Summary Judgment, and within ten days of receipt of any order from a court setting a case for trial, for matters related to this Consent

Decree.

22. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendant may not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section IX.

### XIII. CERTIFICATION

23. Settling Defendant certifies individually that, to the best of his knowledge and belief, after thorough inquiry, he has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to his potential liability regarding the Site, and that he has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

### XIV. NOTICES AND SUBMISSIONS

24. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it must be directed to the individual(s) at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein will constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Boyko, respectively:

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice (DJ # 90-11-2-07713/2)  
P.O. Box 7611  
Washington, D.C. 20044-7611

As to EPA:

Office of Regional Counsel  
U.S. EPA Region 2  
Meadowlands Plating & Finishing Site Attorney  
290 Broadway, 17th Floor  
New York, NY 10007-1866

Dana Anderson  
U.S. EPA  
26 W. Martin Luther King Drive  
Attention: FINANCE  
MS: NWD  
Cincinnati, Ohio 45268  
E- Mail (to both) anderson.dana@epa.gov and  
AcctsReceivable.CINWD@epa.gov

As to Settling Defendant:

David M. Katzenstein, Esq.  
McGiveney & Kluger, P.C.  
23 Vreeland Road  
Florham Park, New Jersey 07932

#### XV. RETENTION OF JURISDICTION

25. This Court will retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

#### XVI. INTEGRATION

26. This Consent Decree and its appendices constitute the final, complete and exclusive

agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

#### XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

27. This Consent Decree will be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

28. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

#### XVIII. SIGNATORIES/SERVICE

29. Each undersigned representative of Settling Defendant and the Chief/Deputy Chief, Environmental Enforcement Section certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

30. Settling Defendant agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

31. Settling Defendant must identify, on the attached signature page, the name and

address of an agent who is authorized to accept service of process by mail on behalf of Settling Defendant with respect to all matters arising under or relating to this Consent Decree. Settling Defendant agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

#### XIX. FINAL JUDGMENT

32. Upon approval and entry of this Consent Decree by the Court, this Consent Decree will constitute the final judgment between and among the United States and Settling Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2006.

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United States District Judge

FOR THE UNITED STATES OF AMERICA:

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Sue Ellen Wooldridge  
Assistant Attorney General  
Environment and Natural Resources Division

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Kirk W. Koester  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
United States Department of Justice  
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Consent Decree  
United States v. Tarrant, et. al  
Civil Action Number 03cv3899 (JCL)  
District of New Jersey

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

DATED:

\_\_\_\_\_  
Frances Zizila, Esq.  
Office of Regional Counsel  
U.S. EPA Region 2  
290 Broadway  
New York, NY 10007-1866

Consent Decree  
United States v. Tarrant, et. al  
Civil Action Number 03cv3899 (JCL)  
District of New Jersey



Date: 4-13-05



\_\_\_\_\_  
PAUL BOYKO

\_\_\_\_\_  
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Florham Park, New Jersey 07932

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